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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

10
11 In the Matter of the Protest of
12 BURBANK KAWASAKI, INC.,
13 Protestant,
14 v.
15 KAWASAKI MOTORS CORP., U.S.A., a
Corporation,
16 Respondent.
17

Protest No. PR-2328-12 and PR-2333-12

**RESPONSE OF KAWASAKI MOTORS
CORP., U.S.A. TO PROTESTANT'S
OPENING POST-HEARING BRIEF**

18
19 Protestant Burbank Kawasaki, Inc. ("Protestant") concedes the following material
20 breaches of its Kawasaki Authorized Dealer Sales and Service Agreement ("Dealer Agreement"),
21 which caused Kawasaki Motors Corp., U.S.A. ("Kawasaki") to issue its Notice of Termination: it
22 has no floor plan financing, it is not selling adequate numbers of Kawasaki vehicles and it has an
23 inadequate model inventory. (*See, e.g.*, Protestant's Opening Brief, p. 7, l. 11). Protestant's
24 purported excuse, however, is to claim that these material breaches of the Dealer Agreement are
25 due to factors beyond its control, and that it should be given even more time (in addition to the
26 year and a half since it lost its flooring and at least five years of very poor sales) to address these
27 issues. Both of these claims are specious. Even if Protestant could successfully blame its
28 material breaches of the Dealer Agreement on third parties such as Kawasaki Motors Finance

1 Corp. (“KMFC”) or Bank of America and Wells Fargo, such excuses would not remove the need
2 for Protestant to provide adequate flooring, inventory and sales. And, even if Protestant were to
3 take responsibility for its actions, additional time would not solve the deficiencies in its
4 performance and would not reverse the negative impact that Protestant’s role as a Kawasaki
5 dealer has had on the consuming public. Finally, Protestant’s actions or lack thereof have
6 demonstrated that additional time will not enable it to cure the material breaches of its Dealer
7 Agreement with Kawasaki. Protestant *has not even applied for alternate flooring* in the year and
8 a half since it lost its floor plan financing with KMFC. Moreover, its “solution” is that it only
9 needs a grossly inadequate \$20,000 to \$50,000 line of flooring credit. In short, Protestant has
10 shown no genuine interest in curing its deficiencies, but rather insists on maintaining the deficient
11 status quo.

12 Conversely, Kawasaki has shown that it has given Protestant every opportunity to cure
13 these breaches and has sustained its burden to show good cause to terminate Protestant’s
14 Kawasaki Dealer Agreement. Kawasaki demonstrated that Protestant has been unable for at least
15 five years to make an adequate number of sales of Kawasaki vehicles compared to those that were
16 available to it. Protestant has also lacked any floor plan financing for over a year and a half.
17 Protestant lacks even a basic amount of Kawasaki inventory¹ (claiming it does not need one) and
18 Protestant has not and is not serving the public interest. For all of these reasons, and for those set
19 forth in Kawasaki’s Post-Hearing Brief, Kawasaki has demonstrated good cause to terminate its
20 Dealer Agreement with Protestant.

21 **I. Protestant Is Responsible For Its Lack of Floor Plan Financing.**

22 Protestant claims that it should not be held accountable for its failure to have floor plan
23 financing because this situation has been caused by factors beyond its control. Specifically,

24 _____
25 ¹ Protestant was down to an inventory of only eleven Kawasaki motorcycles and ATVs at the
26 time of the hearing, seven of which were “aged,” meaning that they had been purchased from
27 Kawasaki more than 12 months earlier. (RT II, 81:3 – 82:14). *This means that Protestant had*
28 *only four newer units in stock.* Yet Protestant’s owner testified that it only needed to add “maybe
four, five, six more bikes to fill in the gaps...” (RT III, 67:5-21). In other words, Protestant has
neither the ability nor intention of complying with its contractual obligation to stock a full line of
Kawasaki motorcycles and ATVs, which Mr. Fischer of Kawasaki testified would be
approximately 75 units, depending on seasonality and demand. (RT II, 120:17 – 121:15).

1 Protestant claims its contractual breach should be excused because of: (1) KMFC’s
2 “unreasonable” requirement that Protestant obtain an irrevocable letter of credit (“ILOC”) as
3 additional collateral, (2) Kawasaki’s requirement for the amount of Protestant’s line of credit is
4 too high, and (3) Protestant has allegedly “explored every option” to correct this deficiency.
5 None of these allegations, however, has any validity and they fail to undercut the conclusion that
6 Kawasaki has good cause to terminate Protestant’s Dealer Agreement.

7 **A. KMFC’s ILOC Requirement Does Not Excuse Protestant’s**
8 **Performance Of Its Contractual Obligations.**

9 Protestant attempts to excuse its breach of the Dealer Agreement by blaming KMFC for
10 requiring an ILOC as additional collateral to reinstate Protestant’s line of credit. This KMFC
11 requirement – whether valid or not – is not relevant to whether Kawasaki has established good
12 cause to terminate its Dealer Agreement with Protestant. Kawasaki demonstrated, without
13 challenge at the hearing, that it and KMFC are separate companies with separate business
14 interests. (RT III, 78: 19-79: 3). Simply because a third party lender might be less than
15 accommodating to the dealer, which is far from true here,² it does not excuse the dealer’s failure
16 to comply with the lawful and material terms of the Dealer Agreement.

17 The dealer’s obligation to have a floor plan line of credit is essential to its ability to
18 function as a dealer – and a central obligation under the Dealer Agreement. *See* Paragraph 14A
19 of the Kawasaki Dealer Agreement, Exh. 303. Just because all dealers, including Protestant, must
20 negotiate and maintain that financial relationship with a third party – just as Protestant does with
21 a landlord from whom it leases its required dealership facility – does not mean that Protestant can
22 avoid its contractual obligation, *even if* that third party – finance source or landlord – acts in a

23 ² The evidence showed that KMFC required this additional collateral because of the dealership’s
24 problems with the timing of repayment to KMFC after vehicles were sold, and lack of
25 cooperation during inventory checks. (RT III, 91: 2-10; RT III, 92: 7-12, Resp. Exh. 306 at
26 KMC983-984). Moreover, KMFC’s right to demand additional collateral is part of Protestant’s
27 contract with KMFC. (RT III, 27: 10-28: 7, Prot. Exh. 8). In addition, KMFC did not repossess
28 Protestant’s inventory when it suspended the flooring line. (RT III, 82:1 – 21) Finally, KMFC
required an ILOC of only 25% of the total credit requirement – though it could have required up
to a 100% ILOC from Protestant, as it has with other Kawasaki dealers, and KMFC worked with
Protestant to assist it in attempting to obtain an ILOC by providing a sample on several occasions.
(RT III, 96:7- 98:5, 100:12-22). In summary, the evidence demonstrated that KMFC worked very
hard with Protestant to assist it in resolving the flooring issue.

1 way that makes it more difficult to comply with that contractual requirement.

2 If performance of a contract is possible, a party's failure to perform is not an excuse for
3 non-performance. Rather, such a failure is a breach, even if the obligor may have become wholly
4 unable to perform. If the action on which the parties agree in a contract is possible and lawful, it
5 must be done to avoid breaching the terms of the contract. *Kennedy v. Reece* (1964) 225 Cal.
6 App.2d 717, 725. Impossibility, to be a valid defense to a contract breach, must attach to the
7 nature of the thing to be done and not to the inability of the promisor to do it. For example, a
8 defendant's failure to obtain permission to divert traffic so plaintiff could construct new roads did
9 not excuse performance on grounds of impossibility, when defendant could have arranged for the
10 diversion by using greater diligence or better planning. *Hensler v. City of Los Angeles* (1954) 124
11 Cal. App.2d 71, 83. Here, Protestant had the option of obtaining the KMFC-required ILOC from
12 a bank, or of obtaining a floor plan line of credit from an alternate financial institution. Protestant
13 was not required to obtain flooring from KMFC. (RT III, 30: 15-17). Protestant took neither
14 action and therefore remains in material breach of its Kawasaki Dealer Agreement.

15 **B. Protestant's Breach Is Not Excused Because Kawasaki Would Not Allow**
16 **Protestant To Operate With An Inadequate Credit Line.**

17 Protestant also argues that the amount of floor plan financing required by Kawasaki was
18 too high and Kawasaki should be compelled to continue business with a dealer with only minimal
19 ability to purchase vehicles. Protestant claims that the termination of its Jet Ski and Side by Side
20 product lines, along with changes in the frequency of ordering, and the general diminished
21 demand for the types of products that Kawasaki makes should mean that the \$765,000 floor plan
22 requirement was excessive. This contention, however, is absurd, fails to account for the drop in
23 Protestant's floor plan requirement *before* its line was suspended, and ignores the reality of the
24 credit necessary to stock and to operate a fully functioning Kawasaki dealership.

25 As is shown in Respondent's Exhibits 315 through 318 and 330, Protestant has had an
26 actual floor plan limit of \$1.25 to \$1.56 million in from 2006 to 2010 – most of which it used
27 regularly. As a result, the \$765,000 requirement that was set forth in the letter demanding that
28 Protestant address the loss of its line of credit *was already a significant reduction* from that prior

1 amount and took into account the decline in the overall market and the changes in the ordering
2 cycle. (RT I, 111: 1-9; Resp. Exh. 305).

3 Conversely, Protestant's claims at the hearing that it could fully function with \$50,000 in
4 flooring credit (RT II, 216: 11-217: 21), or in its email to KMFC that it only needed a \$20,000
5 floorline (Prot. Exh. 9; RT III, 119: 17-120: 4), are wildly unrealistic. In order to meet its
6 contractual obligation and to adequately serve the public, Protestant must have approximately 75
7 Kawasaki vehicles in inventory. (RT II, 120: 17-121: 3). Kawasaki products cost a dealer
8 between \$1,900 and \$14,000 per vehicle. (RT III, 46: 17-47: 9). Therefore, the miniscule
9 amounts posited by Protestant as a "reasonable" flooring credit line would neither support an
10 adequate inventory nor an adequate number of sales.

11 Mr. Bellissimo responded to these facts by essentially arguing that his dealership could
12 "free ride" off of the inventory of other dealers, by buying vehicles from them to meet immediate
13 individual customer demands and that he could buy and sell product "quick." (RT III, 46:15 –
14 47:6, 67:5 – 68:3, 71:7 – 72:8). In short, Protestant had no credible explanation as to how it could
15 meet its contractual obligations to offer and display a full-line of Kawasaki products to the public
16 or to sell an adequate number of Kawasaki vehicles with such a bare bones flooring credit line.
17 Most importantly, regardless of the amount of floor plan required by Kawasaki, *Protestant has*
18 *had no financing of any kind or size for over a year in a half.* In short, the size of the credit line
19 required by Kawasaki does not excuse Protestant's failure to have a floor plan line of credit.

20 **C. Protestant's Claim Of "Exploring Every Option" To Obtain Flooring Credit**
21 **Rings Hollow.**

22 Protestant's claim that it has explored "every option" to obtain floor plan financing is
23 patently untrue. Protestant admitted it never even *applied for* floor plan financing from another
24 financial institution. (RT I, 65: 20-23). Protestant further makes the unbelievable claim that it
25 could not get an ILOC from Bank of America or Wells Fargo (despite being provided with a
26 sample form ILOC by Cheryl Mottel of KMFC on several occasions), solely because multiple
27 employees at several branches of these major national banks *had never heard of Irrevocable*
28 *Letters Of Credit.* (RT III, 38:1-20, 100:12-22). This incredible claim is further discredited by

1 the fact that other Kawasaki dealers have obtained ILOCs (as required by KMFC) from Bank of
2 America. (RT III, 104:19 – 106:18; Resp. Exh. 306).

3 Further, Protestant asks that this Board find that Kawasaki lacks good cause to terminate
4 because KMFC (an independent third party) would not accept Mr. Bellisimo’s house as additional
5 collateral in lieu of an ILOC or because Protestant allegedly has financial backing from Mr.
6 Bellisimo’s brother. Kawasaki showed that these amateurish, eleventh-hour efforts to prevent the
7 termination of Protestant’s Kawasaki Dealer Agreement, however, fall far short of providing
8 acceptable, long-term financial stability for the dealership. KMFC (again, a third party) has no
9 obligation (or ability, according to Ms. Mottel) to engage in mortgage-based lending, and does
10 not do so for any Kawasaki dealer. (RT III, 113: 24- 114:17).

11 In addition, the one-sentence letter purporting to indicate the willingness of Mr.
12 Bellisimo’s brother to allow Protestant to use the funds in his brother’s bank account is vague and
13 inadequate. First, it is indefinite as to the continued availability and amount of the funds. (Prot.
14 Exh. 10; RT III, 50: 8-21). Second, it does not meet the Dealer Agreement’s requirement that
15 adequate flooring credit be maintained with “a financing institution acceptable to [Kawasaki].”
16 (Resp. Exh. 303, ¶14). Third and most tellingly, the money allegedly available in Mr.
17 Bellisimo’s brother’s bank account *was never used to purchase a single Kawasaki vehicle and*
18 *Protestant’s owner testified he has no present intention of using the funds in that account to*
19 *purchase inventory.* (RT III, 64: 7-65: 14, 68: 4-69: 20). Rather than showing that Protestant has
20 explored “every option” to resolve its lack of floor plan financing, these efforts demonstrate that
21 Protestant is either unable or unwilling to obtain financial backing from commercially acceptable
22 sources or even to purchase Kawasaki inventory using cash in an account to which it claims it has
23 access.

24 Protestant’s failure to have floor plan financing for over 18 months is the direct result of
25 its inability or unwillingness to comply with the requirements of KMFC or its inability or
26 unwillingness to obtain alternative floor plan financing from another acceptable financial
27 institution. The ability to fulfill either option in meeting its contractual obligation to Kawasaki
28 was completely within its control, and Protestant’s failure to meet this material, fundamental

1 contractual requirement means that Kawasaki has good cause to terminate Protestant's Kawasaki
2 Dealer Agreement.

3 **II. Protestant Is Responsible For Its Failure To Sell Kawasaki Vehicles.**

4 In its Opening Brief, Protestant claims that its insufficient sales can also be explained by
5 factors outside of its control. Specifically, Protestant claims that its lack of sales performance is
6 attributable to its lack of floor plan financing, Kawasaki's "refusal" to provide it with new
7 product, and the general economic climate. Similarly to Protestant's other claims, these
8 assertions lack merit and do not excuse Protestant's material breaches of its Dealer Agreement.

9 As explained more fully in Section I, Protestant's lack of floor plan financing is directly
10 attributable to the actions and inactions of Protestant. Credit issues aside, Protestant's lack of
11 Kawasaki products to sell is also directly the fault of Protestant. Every witness acknowledged
12 that Kawasaki never refused to sell Protestant Kawasaki vehicles in exchange for cash. (*See, e.g.*,
13 RT II, 100: 2-9). And even when Mr. Bellissimo claimed to have access to his brother's cash, he
14 admitted he would not use that cash to purchase Kawasaki inventory. (RT III, 64: 7-65: 14, 68: 4-
15 69: 20). These are not circumstances in which Kawasaki denied product to Protestant; the lack of
16 inventory that led to *a further decline* in sales (Protestant's sales were deficient even before it lost
17 its floor plan financing) was directly attributable to the actions and inactions of Protestant.

18 In addition, Protestant claims that its abysmal sales performance is explained by the
19 general decline in the demand for recreational products and vehicles since 2008. This assertion
20 also lacks merit. The standard used by Kawasaki and its expert witness, Mr. Palmer of Urban
21 Science Applications, Inc., does not depend on Protestant's ability to sell *any set number* of
22 vehicles. Rather, sales penetration calculates a dealer's new vehicle sales made anywhere *as a*
23 *percentage of the registrations of all competitive makes in the dealer's Statistical Evaluation*
24 *Area ("SEA")*, the group of census tracts closest to the subject dealer. To gauge sales
25 effectiveness, a dealer's sales penetration percentage is then compared as a ratio to Kawasaki's
26 sales penetration throughout the nation, to determine whether the dealer being analyzed is
27 achieving sales at a rate either below, at, or above the average for all Kawasaki dealers. (Resp.
28 Exh. 314; RT II, 139: 15-17). Expressed as a percentage, the resulting quotient calculates a

1 dealer's "sales effectiveness." (RT II, 143: 14-20).

2 Because sales effectiveness is a percentage, the total number of Kawasaki vehicles and the
3 total number of comparable vehicles sold is taken into account in the calculation. The calculation
4 compares Protestant's ability to capture an average share of the total market of motorcycles and
5 ATVs sold. Protestant was expected to sell an average *percentage* of the total sales that actually
6 occurred. Therefore, declines in the *overall* market do not explain the inadequacy of Protestant's
7 sales compared to that which was available to it.

8 Specifically, Kawasaki and its expert showed, without contradiction, that Protestant's
9 sales in 2008 *were only 41%* of the expected sales made by an average Kawasaki dealer, and by
10 2012, Protestant's performance had dropped to *below 20%* of the sales expected of an average
11 Kawasaki dealer. (Resp. Exh. 314) (summarizing Resp. Exhs. 319-325). *Further, if Kawasaki*
12 *had used a more localized district or region average performance standard, rather than the*
13 *national average, Protestant's percentage of expected sales would have been worse -- as the*
14 *Kawasaki dealers in the district and region in which Protestant is located outperformed*
15 *Kawasaki dealers nationwide.* (RT I, 147: 13-148: 3). Therefore, even using the most generous
16 standard to Protestant, which compared Protestant to a national average level of sales penetration,
17 Protestant's abysmal sales performance was a material breach of its obligation under the Dealer
18 Agreement, and not the result of any depression in the overall motorcycle and ATV market.

19 For these reasons, Protestant's efforts to blame his poor sales showing on the general
20 economy and the depressed market for the type of vehicles distributed by Kawasaki lacks merit
21 and should be rejected.

22 **III. Protestant's Request For More Time To Obtain Financing Should Be Rejected.**

23 As a last-ditch effort to avoid termination of its Dealer Agreement, Protestant concludes
24 its Post-Hearing brief with a request that the Board grant it additional time to re-establish its floor
25 plan financing, rather than allowing Kawasaki to terminate the Dealer Agreement now. The
26 Board should deny this request for a number of reasons:

27 (1) Protestant has already had more than 18 months to reinstate its floor plan financing
28 with KMFC or to get alternative financing. It has not done so, and has made no legitimate effort

1 to meet this key contractual requirement. It has neither obtained an ILOC as required by KMFC,
2 (RT I, 29: 19-22, 31: 1-5), nor has it found an alternative bank or financial institution for floor
3 plan financing. (RT III, 84: 17-23). In fact, *Protestant admitted that it never even completed an*
4 *application either for an alternative flooring line of credit or for an ILOC, from any financial*
5 *institution.* (RT I, 65: 20-23; RT III, 38: 11-17).

6 As always, Protestant seeks to blame its situation on others. (*See, e.g.,* RT III, 38:1 –
7 40:20 – Mr. Bellissimo’s testimony that employees at Bank of America, KMFC, Kawasaki and
8 even Protestant’s own dealership cannot do their jobs). Mr. Bellissimo further asserted that
9 several employees of major financial institutions do not know what a letter of credit is and would
10 not help him obtain one. (RT III, 38: 11-17). Protestant claims to have access to cash from Mr.
11 Bellissimo’s brother to buy Kawasaki inventory, yet refuses to use it. (RT III, 64: 7-65: 14, 68: 4-
12 69: 20; Prot. Exh. 10). And, Protestant has asserted that it can run a dealership based on a line of
13 credit that is so low that it would not cover the cost of more than a handful of Kawasaki vehicles.
14 This testimony, and other assertions made at the hearing by Protestant are so utterly unbelievable
15 that Protestant’s only witness, its owner – Leon Bellissimo – lacks any credibility.³ This Board
16 should not compel Kawasaki to continue to do business with Protestant under these
17 circumstances.

18 (2) Protestant has made neither a substantial nor a permanent investment in the
19 dealership. The dealership facility has not been upgraded in the 30+ years that Protestant has
20 been in operation. (RT I, 18: 10-19: 3, RT II, 74: 23-75: 4, 83: 7-16). Its dealer principal is often
21 physically absent from the dealership during business hours. (RT II, 72: 10-73: 19, RT III, 93:
22 21-94: 4). Further, Protestant’s dealer principal will not lose his house if the franchise is
23 terminated, because it is nearly paid off (RT III, 51: 4-20; Prot. Exh. 7), and Protestant has five

24 _____
25 ³ For example, despite claims made at the hearing that Protestant, through its owner, Mr.
26 Bellissimo, had worked consistently to promote Kawasaki products, Mr. Bellissimo’s testimony
27 was effectively impeached, by a showing that Protestant recently and publicly denigrated
28 Kawasaki and its products – permanently. In August, 2012, Mr. Bellissimo deliberately posted
comments on the website ripoffreport.com that impugn the integrity of several named Kawasaki
employees and further stated, “Many riders are dead do [sic] to possible mechanical failure or
factory recall....” of Kawasaki products. Finally, the post bluntly urged the public, “Please do
not support Kawasaki products.” (RT III, 14: 9-17: 24, 18: 3-17; Resp. Exh. 309).

1 active scooter franchises and the monthly rent for the dealership facility is so low that it will not
2 be forced out of business. (RT I, 18: 3-9; Stipulated Facts at ¶ 10; RT I, 17: 20-24; RT II, 194: 9-
3 13).

4 (3) *Even prior to its loss of floor plan financing*, Protestant was already in breach of
5 its obligation to sell adequate numbers of Kawasaki products, by making an abysmal 41.4%,
6 25.3%, 32.7% and 22.4% of its annual expected sales respectively, from 2008 through 2011 and
7 showing a steady decline in sales penetration *for at least 4 years running*. (Resp. Exh. 314).

8 (4) Protestant is among the very worst Kawasaki dealers in terms of customer sales
9 satisfaction index (“SSI”) rankings. *It ranks last of the 39 dealers in its own District, next to last*
10 *of 242 dealers in the Region and 9th from last of 1206 dealers in the entire country*. (RT I, 152:
11 16-21, 157: 4-16; Resp. Exhs. 326, 328). Not surprisingly, more than 80% of the customers who
12 live in Protestant’s SEA and want to purchase Kawasaki motorcycles and ATVs *already* avoid
13 Protestant’s dealership and travel to another Kawasaki dealer that is farther away from them in
14 order to make their Kawasaki vehicle purchases. (RT I, 142: 7-24, 159: 25-160: 3, Resp. Exh.
15 323). The public will be served by the termination of Protestant’s Dealer Agreement.

16 Allowing additional time to obtain floor plan financing (presumably at the unacceptable
17 level posited by Protestant) will not address the remaining material breaches of Protestant’s
18 Kawasaki Dealer Agreement or the fundamental failure of Protestant to represent Kawasaki
19 products and to serve the needs of the consuming public.

20 To the contrary, Kawasaki presented convincing and largely unrefuted evidence in support
21 of all of the statutory good cause factors at issue. No reason exists to delay this process any
22 further. This Board should find that Kawasaki has established good cause to terminate
23 Protestant’s Kawasaki Dealer Agreement.

24 Dated: April 23, 2013

BAKER & HOSTETLER LLP
MAURICE SANCHEZ
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26 
27 _____
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KAWASAKI MOTORS CORP., U.S.A.

PROOF OF SERVICE

I, Elly Cordero, declare:

I am employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 600 Anton Boulevard, Suite 900, Costa Mesa, California 92626-7221. On April 23, 2013, I served a copy of the within document(s):

RESPONSE OF KAWASAKI MOTORS CORP., U.S.A. TO PROTESTANT'S OPENING POST-HEARING BRIEF

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. and the transmission was reported as complete and without error.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Costa Mesa, California addressed as set forth below.
- by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- following ordinary business practices, the envelope was sealed and placed for collection by Federal Express on this date, and would, in the ordinary course of business, be retrieved by Federal Express for overnight delivery on this date.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via electronic mail the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m. and the transmission was reported as complete and without error.

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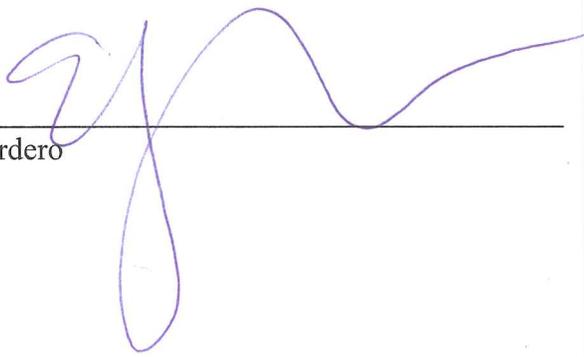
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BURBANK KAWASAKI INC.

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 23, 2013, at Costa Mesa, California.



Elly Cordero

BAKER & HOSTETTLER LLP
ATTORNEYS AT LAW
COSTA MESA